

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL SELDERS,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 222015

Oakland Circuit Court

LC No. 99-164556-FH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury trial conviction of malicious destruction of property. MCL 750.377a. Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to eighteen months' probation with the first year in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he was denied a fair trial due to prosecutorial misconduct. Claims of prosecutorial misconduct are decided on a case-by-case basis. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). "The reviewing court examines the record and evaluates the alleged improper remarks in context. The test is whether defendant was denied a fair and impartial trial." *Id.* (citations omitted).

Defendant contends that the prosecutor engaged in misconduct in two ways: (1) by cross-examining him on whether an alibi witness reported his information to the police; and (2) by questioning, during oral argument, why the alibi witness had not been called to corroborate defendant's alibi. We reject both of these arguments. "Where a defendant's testimony alludes to the possibility that an absent 'witness' would exculpate the defendant, the prosecutor is entitled to explore the credibility of such testimony." *People v Fields*, 450 Mich 94, 108; 538 NW2d 356 (1995). Where the defendant testifies, the prosecutor is permitted to comment on the defendant's failure to produce corroborating witnesses. *Id.* at 115. Accord *People v Jackson*, 108 Mich App 346, 351-352; 310 NW2d 238 (1981); *People v Shannon*, 88 Mich App 138, 145; 276 NW2d 546 (1979).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy